> "The fact that the debtor has only one asset, e.g. an interest determinable on bankruptcy which would be destroyed if a receiving order were made, is sufficient reason for the Court to refuse to make such an order",

which cites as its authority *In re Otway* (1895) 1 Q.B. 812.

The merits of the debtor in *Otway's* case were certainly better than the merits of the present debtor. But in that case Lord Esher said:—

> "Then, upon the other point, it seems to me to be clear that to let this petition go on would be doing what is called in *Ex parte Robinson, In re Robinson*, a vain thing; and, if that is true, that case says the Bankruptcy Court ought not to allow things to go on, and that the petition should be put an end to. Now here the evidence is clear that if there is this bankruptcy the only asset out of which the bankrupt can pay any creditors, including the petitioning creditor, is an asset which by the bankruptcy is put an end to, and nothing is left. The case comes within s. 7, sub-s. 3, of the Bankruptcy Act, 1883, which says that there are sufficient causes, besides those specially named in the section, for which the Court may come to the conclusion that no order ought to be made, and that the petition should be dismissed".

If a debtor has no assets and is not likely to become possessed of any, the making of a receiving order is "a vain thing" and may be refused. *In re Emma Somers* 4 Manson 227, but the Court is not lightly to accept the debtor's statement that he has no assets or prospect of getting assets. In *In re Betts* (1897) 1 Q.B. 50. Lord Esher pointed out that "the Court is not at this stage of the proceedings in a position to know whether that statement of the debtor is true". That is, because there had not been a public examination. But in the case before me the debtor was examined on behalf of the petitioning creditors on the judgment debtor summons and no assets were disclosed.

I am however, far from thinking that this should be regarded as proof that this young man, even if he has no assets now, will not become the owner of property apart from the will.

What does impress me is that an adjudication may be of no real value to the creditors in this case and may cause very serious hardship to the debtor.

The debts are, so far as the evidence indicates, all for costs in the suit No. 103 of 1937. It is not a case of extravagence of living or of speculation or borrowing.

The creditors point out that if they reimburse themselves out of the trust fund that fund will be reduced and therefore the beneficiaries who receive interest from it will receive smaller dividends. The advantage of adjudication is that the debtor's interest, if forfeited, will be an accretion to the trust fund which will more than make up to the fund what it loses by the creditors indemnifying themselves from it.

It appears to me that if I dismiss this petition, the petitioning creditors as trustees will continue to hold the share of the property to which the debtor may possibly be entitled in 1946.

If his interest vests, they can, before paying him, deduct the amount they have drawn from the fund together with interest on that amount from the sum to which the debtor may be found to be entitled to recover from the trustees. With the money so made available the beneficiaries whose interest in the income of the fund has been reduced, can receive at the debtor's expense the amount they have short received.

It appears to me therefore that the petitioning creditors really hold sufficient security for the debt due to them if the debtor's interest under the will ever vests in possession. If that interest is merely contingent and never vests, the adjudication will serve no useful purpose so far as the debtor's interest is concerned.

Should the debtor become possessed of assets at any future time within the life of the petitioning creditors' judgment or if the debtor gets into further debt, the petitioning crediors may serve a fresh bankruptcy notice demanding payment of the amount due to them under their judgment.

The petition is dismissed without costs.

Petition dismissed.

Solicitors for the Petitioning Creditors—
Sisson & Delay.

Solicitor for the Debtor—
E. M. Tampoe Phillips.

[ORIGINAL CIVIL JURISDICTION]

HORNE, J.

March 1, 1939.

IN THE ESTATE OF SYED HUSSAIN BIN OMAR BIN SHAHAB DECEASED.

[SINGAPORE PROBATE No. 51 of 1939]

Will—Probate—Executor according to the tenor—form of Grant—Section 10 Probate and Administration Ordinance (Cap. 51) Practice—Translation of Will and proof of validity of Will in country of domicil.

Deceased died at Gussie, Netherlands Indies, leaving a notarially executed will dated the 26th March 1909 and attested according to the Dutch form, by which he appointed his son Said Ali bin Hassain bin Mohamed Shahab and his brother Said Ahmad bin Mohamed bin Ali to be his "testamentary executors, jointly and severally". He

directed that his estate in the Netherlands Indies and at Singapore be distributed among his heirs according to Sharia and that his estate in Arabia be distributed equally among his sons. The executor first mentioned filed a petition that Probate be granted to him and that leave be reserved to the second mentioned executor to come in and prove the will. Exhibited to the Petition, there was produced a notarially certified copy of the will with an English translation thereof and an Affidavit of a Dutch notary that according to the law of the Netherlands East Indies the original will could not be produced. An endorsement on the Dutch copy of the Will with reference to registration in the "Weeskamer" was rendered in the English translation as follows: "Registered according to a decision of the Court of Intestates at Sourabaya of 11th March 1938 No. 888/B". On the Petition coming for disposal in Chambers the Registrar indicated that he was disinclined to make an order for the issue of a Grant of Probate, and, on the application of the Petitioner, referred the matter to a Judge.

Held that a foreign will may at the discretion of the Court be admitted to Probate in the Colony upon proof of death and either upon proof that the will has been recognised as a valid testament in the Court of the testator's domicil, or upon proof by affidavit of an expert of the law of the country in question that the will is a valid testament by the law of that country.

Petitioner in person.

HORNE, J.—I have compared the translation of the memorandum at the foot of the will with the like translations on two other Muslim wills viz: Probate 180/1913 and Probate 185/1938 and find that "Weeskamer" is translated "Court of Intestate", in this case, "Court of Chancery" in 180/1913 and "Office of Public Trustee" in 185/1938.

The translation of the will and the memorandum is not sworn in the present case, but is certified by a Dutch Notary, as a correct translation. There should be an affidavit verifying the translation both of the will and of the memorandum, which is relied upon as recognition by the Court of the domicil of the validity of the will. I am, however, prepared to accept the translation in the present case. The property here is valued at only $1,000.

The will having been ordered to be registered in a foreign Court there is *prima facie* proof that it has been adopted as a valid testament. *Deshais*, 4 Sw. & Tr. 15.

The petitioner having been named executor therein may be entitled to a grant of probate, but such a grant is discretionary. It was held in *Griawe*, 38 T.L.R. 440 that an executor according to the tenor of the will of a foreigner who died domiciled abroad cannot claim a grant of probate as of right, and the form of grant depends upon the circumstances of the case.

In Probate 47/1938 this Court granted probate though there was no decree of the Court of domicil adopting the instrument as a valid will and no affidavit of foreign law to show its validity. The validity was not questioned but the will appointed the petitioner (who was the testator's husband) "the sole and universal heir" and constituted him "at the same time the executor "with power to take possession of my whole estate." Probate was granted within a year of the death of the testator, which was duly proved by a certificate.

There is no reported case of Probate being granted here in the case of Muslim wills in Dutch language of persons dying domiciled in the Netherlands Indies. And in the two cases above referred to Letters of Administration with the will annexed were granted, in one case to the two named executors jointly and in the other to a local resident holding a Power of Attorney from two named executors.

For the future the practice of having a properly sworn translation both of the document sought to be proved here as a will and of the decree of the Court of domicil establishing validity should be followed.

Alternatively if as in No. 47/1938 no such decree has been passed an affidavit of an expert in the law of the country in question should be obtained by the petitioner to prove the validity of the will. (*Mortimer* 478).

In the present case overlooking the defect as to the translation it appears to me to be a reasonable inference from the vagueness as to the meaning of "Weeskamer" that the petitioner, who states he has administered under the direction of that Court the property in Java, has not been given anything equivalent to a grant of probate in Sourabaya.

The property of the testator in Netherlands Indies and Singapore is devised to his heirs according to Mohamedan law while his property in Arabia is to go to his sons. The petition does not state whether minority interests arise, but the reference of the will to the "Weeskamer" suggests that such interests may arise.

Accordingly I refuse a grant of probate but grant him Letters of Administration with the will annexed (leave to the other executor etc.) and he must give the usual bond with sureties.

Order accordingly.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.